IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FIFTH DAY OF MAY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 4119 of 2005

Between:

1 Sri. B.T. Rajamohan Reddy S/o Sri ramachandra Reddy
R/o 4-8, Madanagopalapuram Rajampet Mandal, Cuddapah
2 M. Narayana Reddy S/o Sri Subba Reddy
R/o Madanagopalapuram Village, Rajampet Mandal, Cuddapah
3 Kolavala Venkata Reddy S/o Chengal Reddy
R/o Madanagopalapuram Village, Rajampet Mandal, Cuddapah
4 B.T. Jayarama Reddy S/o Venkatanarayana Reddy
R/o Thallapaka Village Rajampet Mandal, Cuddapah
5 Allagadda Subbamma W/o Sri Penchal Raju
R/o Hemadrivaripalli Hamlet, Thallapaka Village Rajampet Mandal,

Cuddapah
6 B.T. Murali Mohan Reddy S/o Subrahmanyam Reddy
R/o Madanagopalapuram Village, Rajampet Mandal, Cuddapah
7 Nuka Rama Mohana Reddy S/o Sri Subramanyam Reddy
R/o Sai Nagar, Rajampet, Rajampet Mandal, Cuddapah
8 Langanuru Kamakshamma W/o Sri Ramanaidu
R/o Madanagopalapuram Village, Rajampet Mandal, Cuddapah
9 Dadiboyina Ramalakshmamma W/o Sri Pitchaiah
R/o Thallapaka Village Rajampet Mandal, Cuddapah
10 Balaraju Pedda Sesham Raju S/o Sri Subba Raju
R/o Thallapaka Village Rajampet Mandal, Cuddapah
11 Samanuru Prasad Raju S/o Sri Kalyana Raju
R/o Thallapaka Village Rajampet Mandal, Cuddapah
12 Mannuru Venkata Sesha Reddy S/o Sri Venkatasubba Reddy
R/o Madanagopalapuram Village, Rajampet Mandal, Cuddapah

..... PETITIONERS

AND

1 The State f Andhra Pradesh rep by the Collector Cuddapah District, Cuddapah

2 The District Panchayat Officer, Cuddapah
3 The Chairperson Zilla Parishad and District Level Committee, (Sand),

Cuddapah
4 Sri kakarla Guntaiah S/o Sri Guntaiah
R/o Madanagopalapuram Rajampet Mandal, Cuddapah District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Direction or order, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st 2nd and 3rd Respondent s in conducting an auction and proposing to award a contract to quarry sand from Madanagopalapuram Village, Rajampet Mandal, Cuddapah district as illegal, arbitrary and unconstitutional being against the public interest and policy and consequently quash the notification of the 2nd respondent dated 3-2-05 in Rec. No. 131/2005/A4 and all the consequential proceedings thereof including the auction that was conducted on 19-2-2005 and pass such other order or orders as this Honourable Court deems fit and proper in the circumstances of the case, in the interest of justice.

Counsel for the Petitioners: MR.SIVARAJU SRINIVAS

Counsel for the Respondent Nos. 1 to 3: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.4: V.L.SURENDRA

The Court made the following :

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ORDER:

Twelve residents of Madanagopalapuram village of Rajampeta Mandal, Cuddapah District, filed this writ petition questioning the auction of the right to quarry sand in their village in the river bed of Cheyyeru for the year 2005-06, knocked down in favour of the fourth respondent during the open auction held on 19-02-2005, in pursuance of the tender-cum-auction notice dated 03-02-2005 issued by District Level Sand Committee, Cuddapah.

2. The main grievance of the petitioners is that quarrying of sand in the bed of Cheyyeru in Madanagopalapuram would result in depletion of water, change of water flow during the floods affecting the livelihood of all the farmers of the village. It is their contention when a notification for the same purpose was issued earlier, first petitioner and some other villagers filed W.P.No.719 of 2002 and that a learned Single Judge of this Court stayed the auction by an interim order dated 08-01-2002 and even before the publication of the auction notice dated 03-02-2005, they, after coming to know an auction notice for quarrying sand in their village may be issued, had sent representation to the Collector, Cuddapah, requesting him not to put the right to quarry sand in the river bed at their village to auction but since he did not take any action in pursuance of their representation, auction
knocked down in favour of the fourth respondent should not be given effect to.

3. Though several opportunities were granted to respondents 1 to 3, they did not choose to file their counter-affidavits.

4. Fourth respondent filed his counter-affidavit, *inter alia*, contending that only after a technical committee, consisting of Assistant Director of Mines and Geology, Deputy Executive Engineer Irrigation, Deputy Executive Engineer Ground Water and Divisional Panchayat Officer, inspected, surveyed and identified the sand bearing areas in Rajampet Mandal, did the authorities notify the sand reaches for auction, and so the contention that quarrying sand in Cheyyeru river bed at Madanagopalapuram would result in depletion of water etc., cannot be countenanced. This petition is got filed by the supporters of the sitting M.L.A. of Rajampet, who became successful bidders in two out of three reaches in Rajampet area, and who failed to become the highest bidders in respect of Madanagopalapuram reach, which is a few kilometers away from the reaches for which they became highest bidders, and so they got filed this petition in the name of the petitioners after making the M.L.A. prevail over the Collector not to approve the auction in his favour.

5. The main contention of the learned counsel for the petitioners is that even before the tender notification was issued on 03-02-2005, petitioners immediately after coming to know that proposal to hold auction for quarrying the sand in river bed of Cheyyuru at Madanagopalapuram village are in the pipeline had sent a representation to the Collector, Cuddapah District, requesting him not to grant sand quarrying lease to anybody as it would result in depletion of ground water and may result in the change of water course during floods and would damage the agricultural fields, because during flood season of 2002 Cheyyeru river inundated many agricultural lands and also the village. He relied on BHEEMAGARI BHASKAR v. REVENUE DIVISIONAL OFFICER where a Division Bench of this court held that quarrying permissions for lifting of sand cannot be granted if it results in reduction of percolation of water and depletion of ground water level in the nearby lands affecting agriculture and P.KRISHNAM RAJU v. DIST. COLLECTOR, RANGA REDDY DIST. where it was held that the activity of cleaning of sand would result in depletion of ground and surface water, and contended that since it would be hazardous to the villagers, if vehicles carrying sand from river bed to other places, through the narrow roads of the village, auction held in favour of the fourth respondent is liable to be set aside. He placed reliance letter in Ref.E/220/2005,

dated 20-04-2005 addressed by the Revenue Divisional Officer, Rajampet, to the District Collector, Cuddapah, copy of which was marked to one of the petitioners in support of the said contention.

6. The contention of the learned counsel for the fourth respondent is that since this petition is got filed either by the sitting M.L.A. of Rajampet or her henchmen in the name of petitioners, because her henchmen and followers could not succeed in the auction for Madanagopalapuram reach though they could become successful bidders in respect of the two other reaches, which are very near to the reach of Madanagopalapuram, the District Collector, Cuddapah, succumbing to the pressure of the local M.L.A. is not passing orders confirming the auction in favour of the petitioners. It is his contention that some of the unsuccessful bidders in the auction held on 19-02-2005 for the reaches at Rammannapalli of Chennuru Mandal, filed W.P.No.7805 of 2005 in this Court and the District Panchayat Officer (second respondent herein) who is arrayed as third respondent in W.P.No.7805 of 2005 and who did not choose to file his counter-affidavit in this case, filed his counter-affidavit in W.P.No.7805 of 2005 where he clearly stated that the auction notification dated 03-02-2005 was issued only after obtaining the opinion of technical committee constituted and after that report was discussed in the meeting of the District Level Committee (Sand Auctions) (third respondent) and after that committee accorded permission to conduct auctions by calling for tenders vide its resolution dated 03-12-2004. He disputed the contention that quarrying sand in Cheyyeru river at Madanagopalapuram would result in depletion of ground water, change of river course etc., as the expert committee, which is the competent body would not have permitted sand quarrying in that area and the District Level Committee would not have notified the Madanagopalapuram reach for auction in such an event and contends that the plan and report of the technical committee annexed to W.P.M.P.No.11482 of 2005 filed by the fourth respondent in this W.P. clearly show that Madanagopalapuram reach, advertised for auction, is far away from the village and the contention that sand carrying vehicles would be a hazard to villagers is only an apprehension invented to somehow set at naught the auction knocked down in favour of the fourth respondent.

7. In reply, the contention of the learned counsel for the petitioners is that since the technical committee report, relied on by the fourth respondent, does not contain the signatures of any other Officers except the Officers of the Ground Water Department,

it cannot be taken into consideration, more so because the fourth respondent failed to explain as to how he could obtain a copy of that report.

8. Letter in Ref.E/220/2005, dated 20-04-2005 addressed to the District Collector, Cuddapah, by the Revenue Divisional Officer, Rajampet, strongly relied on by the learned counsel for the petitioners, cannot be taken into consideration either for disposal of this case or for the Collector to decide either the representation of the petitioners or the auction held on 19-02-2005 for Madanagopalapuram reach which was knocked down in favour of the fourth respondent, because that report was sent at the instance of the Collector on a representation said to have been given by the residents of the Madanagopalapuram village on 06-04-2005 to him i.e., the Collector, Cuddapah District. This Writ Petition was filed on 03-03-2005. When it came up for admission on 04-03-2005, in W.P.M.P.No.5524 of 2005, filed by the petitioners, the learned Judge, who admitted the writ petition, passed an interim order that the lease granted in favour of the fourth respondent would be subject to further orders to be passed in the writ petition. It is well known that documents which come into existence after the institution of a case cannot be taken into consideration for deciding the case, because there is every likelihood of their being brought into existence to help one party or the other in the case or proceedings. So, on the basis of the report of the Revenue Divisional Officer, Rajampet, dated 20-04-2005, or his remarks on a representation dated 06-04-2005, said to have been given by the villagers, and subsequent proceedings of the M.R.O. and others, neither this case nor the fate of the auction held on 09-02-2005, which was knocked down in favour of the fourth respondent, can be decided by the Collector. The Collector has to decide about the confirmation or otherwise of the auction knocked down in favour of the petitioners only on the basis of documents and the events that took place prior to 19-02-2005, but not thereafter.

9. The grievance of the fourth respondent, who deposited a huge amount after the bid was knocked down in his favour, is that the Collector either at the behest of the M.L.A., Rajampet, or otherwise, is not passing any order confirming the auction on the ground of pendency of this petition and hence is anxious for early disposal of this petition.

10. In the decisions relied on by the learned counsel for the petitioners, it is held that

permission to quarry sand cannot be granted if such quarrying results in reduction of percolation of water and/or depletion of ground water level in the nearby lands affecting agriculture. But, as rightly contended by the learned counsel for the fourth respondent, second respondent herein, in his counter-affidavit as third respondent in W.P.No.7805 of 2005 (copy of which is produced by the learned counsel for the fourth respondent) clear stated that the District Level Committee (Sand Auctions) with a view to regulate the sand quarry operations all over the District of Cuddapah resolved to constitute three divisionwise teams consisting of Officers from Ground Water Department, R.W.S. Department, Irrigation Department and Mines & Geology Department and those committees were asked to make suggestions, in consonance with the provisions of the A.P. Water, Land and Trees Act, clearly identifying the boundaries of reaches, and were also asked to specify the quantity of sand available in those reaches, and that those teams, after thorough investigation, reported that only 14 out of 31 reaches are feasible for sand quarrying, and that that report was discussed in the meeting of District Level Committee (Sand Auctions), Cuddapah, and then only accorded permission to issue tender notification vide its resolution dated 03-12-2004. The reason for the second respondent not filing his counter-affidavit in this petition, though he filed his counter-affidavit in W.P.No.7805 of 2005 are not known. This attitude of respondents 1 to 3, in a way, lends support to the contention of the fourth respondent, that they are kept under pressure and hence are not able to exercise their discretion independently.

11. Since the technical report of the committee constituted by the District Level Committee (Sand Auctions) is not produced, and since the counter-affidavit of the second respondent, as third respondent in W.P.No.7805 of 2005 filed in respect of some other reach notified in the same notification in which the impugned Madanagopalapuram reach also was notified for auction, shows that only after the technical committee's report was discussed in the District Level Committee (Sand Auctions), Cuddapah, on 03-12-2004 that committee by a resolution accorded permission to conduct auctions of the reaches mentioned therein, it is not possible for me to say whether quarrying sand in Cheyyeru river bed at Madanagopalapuram village would result in depletion of ground water or not. But one thing is certain. The inundablation of the agricultural lands of the village Madanagopalapuram strongly relied on by the petitioners in support of their contention that sand quarrying may result in diversion of water course etc., certainly was not the result of sand quarrying, because those floods are said to have occurred in 2002, and, admittedly, till now, no

sand quarrying took place at Madanagopalapuram village, as the auction proposed to be held in 2002 was stayed by the interim order in W.P.No.719 of 2002 dated 08-01-2002 and if quarrying sand at the other two reaches were the reason, petitioners failing to question those auctions is not explained. The sand reach of Madanagopalapuram, according to the fourth respondent, is far away from the village Madanagopalapuram and is in the middle of the river bed.

12. When the petitioners contend that they sent representations on email and when the Collector is the authority to confirm the sand auctions held; the Collector, Cuddapah, should have taken immediate steps to verify if the quarrying sand in the Madanagopalapuram reach has any adverse affect on the ground water and the course of the river etc. He did not do so. May be because an expert body is looking into it, or there could be other reasons also.

13. Since the Collector, Cuddapah District, kept further proceedings of the auction held on 19-02-2005 where at fourth respondent figured as highest bidder, in cold storage without passing orders either confirming or otherwise, and since he also did not respond to the representation of the petitioners, and did not choose to file his counter-affidavit in this case, I dispose of this writ petition with a direction to the Collector, Cuddapah District, to personally visit Madanagopalapuram village and the Madanagopalapuram village Cheyyeru river bed sand reach, put up for auction on 19-02-2005, and pass appropriate orders on the representation of the petitioners and consequently on the auction of sand reach of Cheyyeru river bed at Madanagopalapuram held on 19-02-2005, after duly taking into consideration the report of the expert committee constituted by the District Level Committee (Sand Auctions) and the resolution of the District Level Committee (Sand Auctions) on 03-12-2004, within a week from the date of receipt of a copy of this order, without being influenced by the report of the Revenue Divisional Officer, Rajampet in his Ref.E/220/2005, dated 20-04-2005, and communicate the decision taken to the first petitioner on behalf of petitioners and the fourth respondent by registered post acknowledge due.

14. The petition is disposed of accordingly. No costs.

C.Y.SOMAYAJULU, J.

Dated 05-05-2005.

skmr

..... REGISTRAR

To

1 The Collector, Cuddapah District, the State of Andhra Pradesh, Cuddapah.
2 The District Panchayat Officer, Cuddapah
3 The Chairperson Zilla Parishad and District Level Committee, (Sand),

Cuddapah
4 2 CCs to G..P. for Panchayat Raj and Rural Development, High Court

Buildings, Hyderabad (OUT).

2 CD copies

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